Supreme Court, U.S.
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No. 97-1592

In the
Supreme Court of the United States
October Term, 1997

COLERAIN HILLS INVESTMENT CO.,

Petitioner,

v.

BOARD OF REVISION OF HAMILTON COUNTY; NORTHWEST LOCAL SCHOOL DISTRICT BOARD OF EDUCATION; DUSTY RHODES, AUDITOR OF HAMILTON COUNTY,

Respondents.

ON MEMORANDUM OF JURISDICTION
TO THE OHIO SUPREME COURT

REPLY BRIEF OF PETITIONERS TO RESPONDENTS BOARD OF REVISION AND DUSTY RHODES BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

Irving Harris, Esq.
Counsel of Record
Ohio Bar Reg. No. 0023001
Harris, Harris, Field,
Schacter & Bardach, Ltd.
441 Vine Street
41st Floor, Carew Tower
Cincinnati, Ohio 45202-3013
(513) 621-2666
(513) 621-4896 FAX

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QUESTIONS PRESENTED FOR REVIEW

I. Whether this Court has jurisdiction to grant the within Petition for Certiorari.

II. Whether Ohio Revised Code §5717.05 violates the Equal Protection and Due Process Clauses of the United States Constitution.

PARTIES TO THE PROCEEDING

1) COLERAIN HILLS INVESTMENT CO.

2) BOARD OF REVISION OF HAMILTON COUNTY

3) NORTHWEST LOCAL SCHOOL DISTRICT BOARD OF EDUCATION

4) DUSTY RHODES, AUDITOR OF HAMILTON COUNTY

5) BETTY MONTGOMERY, OHIO ATTORNEY GENERAL (pursuant to 28 U.S.C. §2403(b), which may be applicable in that this appeal questions the constitutionality of Ohio Revised Code §5717.05)

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Statement of the Case

In the present case, the Petitioner sought review of the Hamilton County Auditor's 1993 appraisal of its real property by the Hamilton County Board of Revision ("BOR"). The Auditor had estimated the value of Petitioner's property at $11,704,000.00, which amount Petitioners contested. The BOR, however, increased the valuation to $13,075,00.00, an excessive amount, especially given the fact that the Court of Common Pleas in 1996 ruled that the same property was worth $11,900,000.00.

The Petitioner thereafter decided to appeal the decision by the BOR. Rather than choosing the administrative route of appeals via the Board of Tax Appeals ("BTA"), the Petitioner instead chose to appeal directly to the Hamilton County Court of Common Pleas, in accordance with Ohio Revised Code § 5717.05. These two forums for appeal are considered alternatives to each other, each involving slightly different considerations. According to O.R.C. §§ 5717.01 and 5717.05, however, Notices of Appeal to both

forums must include the local school district as a party to the proceedings.

Unfortunately, the Petitioner named the incorrect school district in its Notice of Appeal, which error the Petitioner subsequently sought to amend. The Court of Common Pleas refused to allow the amendment and dismissed the case, stating that the Ohio Supreme Court in Huber Heights Circuit Courts, Ltd. v. Carne, et al.,74 Ohio St.3d 306, 658 N.E.2d 744,(1996) held that failure to name the proper school district under O.R.C. § 5717.05 was a jurisdictional defect that was incapable of cure.

The alternative forum for appeal, the Board of Tax Appeals, however, does not make the naming of any school board a jurisdictional requirement. Accordingly, appellants choosing the administrative route of appeals do not risk dismissal of their appeal merely for a minor error in pleading. Petitioners appealed the decision by the Court of Common Pleas to the Court of Appeals, who were bound to affirm the

lower court's decision due to the Huber precedent. The Petitioner then appealed to the Ohio Supreme Court on constitutional grounds; Specifically, Petitioners argued that Ohio Revised Code §5717.05 deprives people of judicial review due to minor procedural defects in pleading, in violation of the Due Process clause, and that it treats similarly-situated taxpayers differently for no logical reason based solely on the appeal forum chosen, in violation of the Equal Protection Clause.

The Ohio Supreme Court, however, which had not considered the constitutional issues in Huber, refused to overrule the Huber decision and thus dismissed the appeal as one not involving a substantial constitutional question.

Petitioners now seek a Writ of Certiorari from this Court to consider the important constitutional issues raised in its Petition and to determine whether Ohio Revised Code Section 5717.05 violates the Due Process and Equal Protection Clauses of the United States Constitution.

ARGUMENT

1: Issue: This Court has jurisdiction to Grant this Petition for Writ of Certiorari

Colerain Hills Investment Company petitions this Court for a Writ of Certiorari pursuant to Rule 10(c), which states that a writ is appropriate where:

> (c) a state court or United States Court of Appeals has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decision of this Court.

In the present case, Petitioner asks this Court to decide an important question of Federal law that the Court has not yet considered; Whether Ohio Revised Code §5717.05 violates the Due Process and Equal Protection Clauses of the United States Constitution. Thus, this Court has jurisdiction to grant the current Petition.

While Respondents may disagree as to whether the statute is indeed unconstitutional,

they certainly cannot disagree that questions regarding the constitutionality of state actions are "important questions of Federal Law", and thus within the jurisdiction of this Court. Respondents also claim that Petitioner's case does not present "compelling" reasons for granting the Petition because it "merely concerns a decision on a state law appeal from a County administrative tribunal." Such an argument completely ignores the fact that every Ohio property owner has an interest in O.R.C. § 5717.05. The statute's unconstitutional provisions threaten each and every one of these individuals, and may affect their ability to obtain judicial review of an erroneous tax appraisal. These are compelling reasons to grant the Petition, and raise important Federal issues. Accordingly, the Petitioner respectfully submits that this Court has jurisdiction under Rule 10 to grant the Petition for Writ of Certiorari.

ISSUE 2: The Petitioner's Constitutional rights to Due Process and Equal Protection of the Law were violated by Ohio Revised Code §5717.05.

Ohio Revised Code Section 5717.05 violates the Due Process Clause of the United States Constitution because it fails to provide taxpayers with the proper procedural safeguards before depriving them of their property. The decisions by the Hamilton County BOR, like all judicial decisions of administrative agencies, must be able to be reviewed by a court of law. Clermont National Bank v. Edwards, 27 Ohio App.2d 91, 102, 273 N.E.2d 783, 789 (1970)(Quasi-judicial decisions and orders of administrative officers and agencies require review). The Petitioner was completely denied the opportunity to have judicial review of the BOR's decision, due to a minor defect in pleading which it promptly attempted to correct. The taxpayer has a strong private interest in the neutral, judicial review of county tax evaluations, and the state's interest in precluding judicial review for technical errors

in pleading is minimal. Therefore, procedural due process demands that Appellant be afforded an opportunity for judicial review pursuant to O.R.C. §5717.05, despite Appellant's failure to name the proper school board as a party to the action. Section 5717.05 violates the Equal Protection clause of the Fourteenth Amendment as well, because it treats similarly-situated people in a different manner. While a state government may create classes of individuals for whom certain laws and rights may apply, if the classifications are baseless and if there is no reason for the differing treatment, the classification violates the equal protection clause of the Fourteenth Amendment. See, e.g. Hartford, Supra; See also, generally Sutton v. Mt. Sinai Medical Center, 102 Ohio App. 3d 641, 657 N.E. 2d 808(1995).

In the present case, O.R.C. §5717.05 creates a two-part classification of persons seeking review of decisions by the BOR based forum-selection. Individuals choosing the O.R.C. § 5717.01 appeals route may have their

appeal heard despite errors in pleading, while individuals choosing the O.R.C. § 5717.05 route of appeals will have the appeal dismissed for failure to join the proper school board as a party. The forum-selection classification discriminates against those appellants choosing the court of common pleas to review the decision by the BOR, and the differing treatment serves no important or even legitimate state purpose. Therefore O.R.C. § 5717.05 violates the Equal Protection Clause of the U.S. Constitution.

Respondents' reliance on Trembal Construction, Inc. v. Cuyahoga County Board of Revision, 94 Ohio Ap..3d 246, 640 N.E.2d 601 (1994) to support its argument is misplaced. The case in Trembal differs greatly from the present one. Trembal involved a dispute over the provision of O.R.C. § 5717.05 which states that "the forum in which the first notice of appeal is filed shall have exclusive jurisdiction over the appeal." Id. at 252, 605; O.R.C. §5717.05. The case did not involve the present dispute over pleading requirements.

Further, the Petitioners in Trembal suffered a dismissal of their appeal because they *ignored* or *renounced* the law, not because they unintentionally made a technical error in seeking their appeal. Id. The Petitioners in Trembal knew that their opponents had filed an appeal with the BTA and that the BTA therefore had jurisdiction over the appeal, but the Petitioners filed a notice of appeal with the court of common pleas anyway. Id. "In short, the landowners chose to fight the law rather than follow the law ..." Id. at 253, 606.

This is not the case before the Court today. In the present case, Petitioners accidentally failed to comply with the requirements of O.R.C. §5717.05, and immediately sought to amend their Notice of Appeal to comply with the statute. Petitioner's appeal did not fail because Petitioners were "unwilling" to comply with O.R.C. §5717.05. See Id. at 254, 607. Rather, Petitioner's appeal failed due to the constitutionally defective provision of O.R.C. §5717.05.

IV. CONCLUSION

We urge this Court to find Ohio Revised Code §5717.05 unconstitutional, in violation of the Due Process and Equal Protection Clauses of the Fifth and Fourteenth Amendments of the United States Constitution, and to thereby reverse the findings of the Trial Court and remand the case to the Trial Court with instructions to try the underlying appeal from the Board of Revision of Hamilton County on its merits under the First Amended Notice of Appeal.

Respectfully
submitted,

By: s/s

Irving Harris, Esq.
Ohio Bar Reg. No. 0023001
Harris, Harris, Field,
Schacter & Bardach, Ltd.
441 Vine Street
41st Floor, Carew Tower,
Cincinnati, Ohio 45202-3013
(513) 621-2666
(513) 621-4896 FAX
Trial Attorney for Appellant
Colerain Hills Investment
Company